

No. 4938-41-75/16337.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Super Electrical and Engineering Company, 50, Industrial-cum-Housing Estate, Faridabad:—

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 52 of 1974

Between

SHRI YASHIN KHAN WORKMAN AND THE MANAGEMENT OF M/S SUPER ELECTRICAL AND ENGINEERING COMPANY, 50, INDUSTRIAL-CUM-HOUSING ESTATE, FARIDABAD

Present.—

Shri Bhim Singh Yadav, for the workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Yashin Khan workman concerned was in the service of M/s Super Electrical and Engineering Company, 50, Industrial-cum-Housing Estate, Faridabad. The following dispute between him and the management was referred for adjudication to this Tribunal,—*vide* order No. ID/FD/74/10461, dated 24th April, 1974, of the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Yashin Khan was justified and in order? If not, to what relief is he entitled?

The parties put in their respective pleadings giving rise to the following issues:—

- (1) Whether the demand, the subject matter of the reference, was first raised on the management and rejected by it before taking up the matter for conciliation, if not, with what effect? (on workman).
- (2) Whether the termination of services of Shri Yashin Khan was justified and in order? If not, to what relief is he entitled? (on management)

No evidence has yet been led on either side. It is, however, not necessary to go into the merits of the case and the issues involved as the parties have arrived at an amicable settlement. Their statements have been recorded.

According to the settlement, the management has agreed to pay Rs 1,250 *ex gratia* to the workman, in full and final settlement of the entire claim and he has given up his right of reinstatement or re-employment. The award is accordingly made in terms of the above settlement holding that the management shall be liable to pay Rs 1,250 to the workman within one week from today in full and final settlement of his entire claim and he would have no right of reinstatement or re-employment. In the circumstances, there shall be no order as to costs.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 9th May, 1975.

No. 795, dated 9th May, 1975

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 9th May, 1975.

The 29th May, 1975

No. 4927-41-75/16615.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Telsons (India), Plot No. 110, Sector No. 6, Faridabad:—

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BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 196 of 1973

Between

SHRI KUL CHARAN SINGH WORKMAN AND THE MANAGEMENT OF M/S TELSONS
(INDIA), PLOT NO. 110, SECTOR NO. 6, FARIDABAD

Present.—

Nemo. for the workman.

Shri A. S. Sharma, Assistant of Shri R. C. Sharma, for the management.

AWARD

The following dispute between the management of M/s Telsons (India) Plot No. 110, Sector No. 6, Faridabad, and its workman Shri Kul Charan Singh was referred for adjudication to this Tribunal,—*vide* order No. ID/FD/521-73/44383, dated 20th November, 1973, of the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Kul Charan Singh was justified and in order ? If not, what relief is he entitled ?

The management contested the claim of the workman on merits pleading *inter alia* that it was a case of self abandonment of service by the workman himself who had submitted his resignation and that the demand, the subject matter of the present dispute had never been raised direct on the management and rejected by it before taking up the matter for conciliation. In his replication the workman disputed the plea of resignation raised by the management but he did not say a word about the demand having properly been raised by him. The following issues arose for determination :—

- (1) Whether the demand the subject matter of the present reference was first raised by the management and rejected by it before taking up the matter for conciliation ? If not, with what effect ? (on management)
- (2) Whether Shri Kul Charan Singh workman concerned had tendered his resignation on 22nd August, 1973, and the same had been duly accepted by the management ? (on management)
- (3) Whether the termination of services of Shri Kul Charan Singh was justified in order ? If not, to what relief is he entitled ?

The case was fixed for evidence. The workman has elected not to appear in person or through authorised representative to pursue his claim. On behalf of the management, on the other hand, Shri A. S. Sharma, authorised representative has made his statement on oath and proved 7 documents including the resignation dated 22nd August, 1973 of the workman Ex. M-1, notice of conciliation dated 10th September, 1973, Ex. M-2, copy of the demand notice received with the notice Ex. M-3 which forms part of the reference, report of the conciliation officer Exhibit M-4, registered cover Exhibit M-5, A.D. receipt Exhibit M-6, whereby the letter dated 25th August, 1973, Exhibit M-7 intimating the workman about the acceptance of his resignation with effect from 23rd August, 1973, was sent but was received back as refused.

I have heard the learned representative of the management and given due consideration to the facts on record. There is apparently no reason to disbelieve the plea of resignation raised by the management which finds support in documentary evidence. The original resignation, dated 22nd August, 1973, of the workman Exhibit M-1, is on record. It was accepted on the same day with effect from 23rd August, 1973, and intimation was sent to him by registered post on 25th August, 1973, asking him to collect his dues. This plea does not appear to be an after-thought as from the perusal of the conciliation report also it is clear that the management had contended there that as a matter of fact this workman had voluntarily resigned his post. That disposes of issue No. 2 which, for the reasons aforesaid, is decided in favour of the management, especially when the workman concerned is not coming forward to make even his own statement on oath to deny the factum of the resignation and its acceptance by the management.

Issue No. 1.—The burden of issue No. 1 was on the workman himself. Inspite of the specific plea raised in the written statement that no demand had been raised directly on the management not a

single word was said by him in his replication that he had first raised the demand on the management, as required by law, before taking up the matter for conciliation. Shri A. S. Sharma M. W. I has sworn testimony to the fact that the demand notice dated 28th August, 1973 copy Exhibit M-3 was for the first time received from the Conciliation Officer,—vide his letter Exhibit M-2. The law is well-settled on the point held in the oft quoted judgement of the Hon'ble the Supreme Court in the Sindhud Re-settlement Corporation case, the demand has first to be raised on the management and rejected by it before taking up the matter for conciliation so as to constitute an industrial dispute within the meaning of the law. But this important requirement has not been satisfied in the instant case, as discussed above, so much so that even the workman could not have the courage to come into the witness box and make his statement on oath and stand the test of cross-examination on the point. The workman having thus failed to bring any evidence worth consideration to refute the contentions raised on behalf of the management, Issue No. 1 is decided against him.

So, on the facts brought on record and for the reasons aforesaid the workman concerned has made out no case at all to support his claim for reinstatement and payment of back wages. He having voluntarily submitted his resignation which was duly accepted by the management and the acceptance having communicated to him, no industrial dispute existed between the parties. Otherwise also the dispute having not been raised properly by first making the demand directly on the management no industrial dispute existed according to the rules of law laid down in the judgement of the Supreme Court referred to above.

In view of my above findings on issues Nos. 1 and 2, issue No. 3 has become redundant the workman having voluntarily submitted his resignation, which was duly accepted, the question of the termination of his services by the management or its justification does not arise for determination. His services automatically stood terminated with effect from the date his resignation was accepted. Otherwise also no industrial dispute existed between the parties which could validly be referred for adjudication. in the circumstances, the workman concerned is not entitled to any relief by way of reinstatement or payment of back dues. He would however, be at liberty to collect his legal dues prior to the acceptance of his resignation, if any, from the management on any working day during working hours. The award is made accordingly but without any order as to costs.

The 30th April, 1975.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 769, dated the 6th May, 1975.

Forwarded four copy to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

The 30th April, 1975

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

No. 4933-41-75/16621.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Hemla Embroidery Mills (P) Ltd., Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 58 of 1975

between

SHRI MADAN SINGH, WORKMAN AND THE MANAGEMENT OF M/S HEMLA EMBROIDERY
MILLS (P) LTD., FARIDABAD.

Present :

Shri Darshan Singh, for the workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Madan Singh, workman concerned was in the service of M/s Hemla Embroidery Mills (P) Ltd., Faridabad. His services were terminated by the management with effect from 2nd December, 1974. He gave the demand notice dated 6th December, 1974 under section 2-A of the Industrial Disputes Act through Shri Darshan Singh, General Secretary Textile Mazdoor Union, N.I.T., Faridabad alleging that the termination of his services had been effected illegally and without any justification and he was entitled to reinstatement with payment of full back wages. The management did not accept this demand. This gave rise to an industrial dispute. The matter was taken up for conciliation which also ended in failure.

On receipt of the failure report from the conciliation officer, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the above dispute for adjudication to this Tribunal, vide order No. IF/FD/75/14181, dated 10th March, 1975 with the following term of references.

Whether the termination of services of Shri Madan Singh was justified and in order ? If not, to what relief is he entitled ?

The parties were called upon to put in their respective pleadings. The workman concerned has filed no statement of claim nor has he come forward to pursue his demand for reinstatement etc. On the other hand, the management has pleaded settlement of the dispute with him and filed his own application admitting the settlement.

Shri R. C. Sharma, authorised representative of the management has sworn testimony to the effect that Shri Madan Singh had approached the management for the settlement of the dispute and the settlement was arrived at in pursuance whereof he had been paid Rs. 288.30, in full and final settlement of his entire claims against the management including the right of reinstatement or re-employment. He has further proved the application Ex. M-1 addressed by Shri Madan Singh workmen concerned where in also he has clearly admitted the above settlement and the fact that there is now no dispute left between him and the management. His authorised representative Shri Darshan Singh through whom the demand notice leading to the present reference had been given has stated that he has no instructions from Shri Madan Singh to refute the above plea of settlement and the payment of the dues to the workman.

In view of the above no further proceedings are called for and a no dispute award is given as per the settlement arrived at between the parties holding that Shri Madan Singh workman concerned is not entitled to any other relief. There shall, however, be no order as to costs.

Dated 9th May, 1975.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 797, dated 9th May, 1975.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 3rd/4th June, 1975

No. 5141-4Lab-75/16785.—In pursuance of the provisions of Sub-Section (4) of Section 10A of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Shri Dhanendra Kumar, I.A.S., Labour Commissioner, Haryana and Sole Arbitrator, Chandigarh in respect of the dispute between the workmen and the management of M/s Usha Rectifier Corporation (India) Ltd, Mathura Road, Faridabad.

BEFORE SHRI DHANENDRA KUMAR, I.A.S., ARBITRATOR AND LABOUR COMMISSIONER,
HARYANA, CHANDIGARH

IN THE MATTER OF DISPUTE BETWEEN THE WORKMEN AND THE MANAGEMENT OF
M/S USHA RECTIFIER CORPORATION (INDIA) LTD; MATHURA ROAD, FARIDABAD

Present :—

1. Shri N. H. Kidwai, for the management.
2. Shri V. G. Nair and others for the workmen.

ORDER

Vide Haryana Government Notification No. 1D/FD/74/37227-31, dated 14th November, 1974, the following industrial dispute between the management of M/s Usha Rectifier Corporation (India) Ltd., Mathura Road, Faridabad and its workmen was referred to me for my arbitration under section 10-A of the Industrial Disputes Act, 1947 :—

“Whether the management are paying minimum rates of wages to their workmen in accordance with the notification issued by the Haryana Government for Engineering Industries”.

2. Usual notices were issued to the parties to appear before the undersigned to proceed with the arbitration proceedings. Both the parties appeared before me on 2nd April, 1975. The learned representatives of the management stated that the wages are being paid to all the workers in accordance with the notification issued by the Government regarding minimum wages for the Engineering Industries. The representative of the workmen having been satisfied with the statement of the representative of the management, withdrew the industrial dispute referred to above.

In view of the above, no industrial dispute exists and no further proceedings are called for in the present case. I give my arbitration award accordingly.

(Sd.)

Dated

Arbitrator and

Labour Commissioner, Haryana.

The 29th May, 1975

No. 5033-4L-75/6617. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s The Haryana State Co-operative Land Mortgage Bank Ltd., Chandigarh.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 64 of 1973

(between)

SHRI TEJA SINGH AND THE MANAGEMENT OF THE HARYANA STATE CO-OPERATIVE LAND MORTGAGE BANK LTD., CHANDIGARH.

Present :

Shri Madhusudan Sharan Kaushish, for the workman.
Shri R.S. Gill, for the management

AWARD

Shri Teja Singh workman concerned was in the service of the Haryana State Co-operative Land Mortgage Bank Ltd., Chandigarh as a Land Valuation Officer since 5th February, 1964. The management terminated his services, —*vide* order dated 24th June, 1968 allegedly on some charges of mis-conduct and after holding departmental enquiry. Feeling aggrieved, he preferred an appeal before the Registrar, Co-operative Societies, Haryana, Chandigarh which was dismissed. He then filed writ petition before the High Court of Punjab and Haryana at Chandigarh which was also dismissed on April 5, 1972 as being not maintainable.

Thereafter, Shri Teja Singh served the management with the demand notice dated 15th November, 1972 alleging that the termination of his services had been brought about in an illegal manner and the same being not justified, he was entitled to reinstatement with payment of full back wages. Conciliation proceedings were started on this demand notice which however, ended in failure and, on receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 referred the above dispute for adjudication to this court, —*vide* order No. 1D/RK/224-A-73/4101 5—19, dated 11th October, 1973, with the following term of reference.

“Whether the termination of services of Shri Teja Singh was justified and in order ? If not, to what relief is he entitled ? ”

The parties put in their respective pleadings. The workman reiterated his demand for reinstatement and payment of back dues as earlier raised through the demand notice referred to above contending that he had not been given any charge-sheet nor any enquiry was held against him and the order of the termination of his services

was not passed by the competent Authority. In the written statement filed in the case, the management controverted the above allegations of Shri Teja Singh and contested his claim on merits pleading *inter alia* that he was not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947 and the reference was bad in law since an alternative remedy had already been availed by him by filing an appeal against the impugned order. The following three issues arose for determination in the case from the pleadings of the parties.

1. Whether Shri Teja Singh claimant is not a workman as defined under section 2 (s) of the Industrial Disputes Act, 1947?
2. Whether the present reference is bad in law for reasons given in the preliminary objections in the written statement?
3. Whether the termination of services of Shri Teja Singh was justified and in order? If not, to what relief is he entitled?

The management has not examined any witness in the case and has merely tendered into evidence copies of some documents including the charge-sheet dated 12th March, 1968 Ex. M.1, explanation of Shri Teja Singh dated 20th March, 1968 Exhibit M.2, report of the Enquiry Officer dated 3rd June, 1968 Exhibit M.3, resolution No. 7, dated 8th June, 1968 Exhibit M.4, order of the Secretary, Haryana State Co-operative Land Mortgage Bank Ltd., Chandigarh dated 24th June, 1968 terminating the services of Shri Teja Singh Ex. M.5, memo dated 2nd August, 1968 of the Joint Registrar placing the appeals of Shri Teja Singh and others in the meeting of the Board of Directors Ex. M.6, resolution No. 2 passed by the Board of Directors in their meeting held on 5th December, 1968 Exhibit M.7, the order of the High Court dated 5th April, 1972 dismissing the writ Petition of Shri Teja Singh Exhibit M.8, statement of Shri Teja Singh recorded on 22nd April, 1968 by the Enquiry Officer Exhibit M.9, the Bye Laws of the Haryana State Land Mortgage Bank Ltd. Exhibit M.10, entry in the register maintained by the office Kanungo Ambala Exhibit M.11 and grounds of appeal filed before the Registrar, Co-operative Societies Exhibit M.12.

On the other hand, Shri Teja Singh workman concerned has made his own statement in support of his above claim.

The case has been argued at length on both sides and I have given a careful consideration to the material on record and the contentions raised by the learned representatives of the parties.

Issues Nos. 1 and 2 have not been pressed on behalf of the management nor has it been shown how Shri Teja Singh, the present claimant, is not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947 and further that the present reference is bad in law merely because he had availed the alternative remedy by filing an appeal against the impugned order of termination of his services before the Registrar Co-operative Societies, Haryana, Chandigarh. Both the issues are, therefore, decided against the management and in favour of the workman.

Issue No. 3—This is the only issue which has been pressed and arises for consideration in the case. According to the management, the present workman had committed acts of serious misconduct in the discharge of his duties as contained in the charge-sheet, dated 12th March, 1968 copy Exhibit M.1, and his explanation to the same (copy Ex. M.2) having been found not to be satisfactory an enquiry against him was held by Shri B.S. Chauhan Deputy Secretary of the Haryana State Co-operative Land Mortgage Bank Ltd., Chandigarh who found him guilty, —vide his report, dated 3rd June, 1968 copy Ex. M.3, and after considering the same the Executive Committee of the Bank in its meeting held on 8th June, 1968 took the decision that he should be removed from service. The workman concerned has no doubt admitted that he had received the charge-sheet dated 12th March, 1968 which contained allegations that he had acted in a deceitful manner in mis-representing the loan cases of Shri Dhian Singh and Smt. Champa Devi for sanction. He has further not denied that he had submitted his explanation copy Ex. M.2 and that the Enquiry Officer had recorded his statement copy Ex. M.9. But his statement has to be read as a whole and he has stated in so many words that no witness including the complainant Shri Dhian Singh was examined in his presence nor was he allowed to cross-examine any witness. He has further stated that he was not given any opportunity to produce his defence. Unfortunate as it is, the enquiry proceedings have not been brought on record for reasons best known to the management. The Enquiry Officer has not been examined as a witness in the case nor any other official of the management who might have said a word about the enquiry having been held in the proper manner. The enquiry report of Shri B. S. Chauhan has also not been duly proved only a copy of the same Ex. M.3 has been tendered into evidence that is not enough to satisfy the requirements of the law which is quite clear and well settled on the point. Nobody can be condemned unheard and there is abundant authority in support of the proposition that before punishing an employee on grounds of misconduct in the discharge of his duties he should be given adequate opportunity of being heard and defend himself. The charges levelled against him by the employer should specifically be communicated to him and after considering his explanation a proper enquiry should be held in his presence, if the same is found to be unsatisfactory. He should be allowed to cross-examine each and every witness who deposed against him in the enquiry and he should further be given full opportunity to produce his own defence. But all these requirements laid down in the various authorities of the Supreme Court and the different High Courts have not been satisfied in the instant case. As already observed, nobody has come into the witness-box to make a

statement on oath that the enquiry had been conducted against the present workman in the manner discussed above, so much so that even the Enquiry Officer has not examined been as a witness in the case nor has the record of enquiry proceedings, if any prepared by him, been produced in the case. No reasonable explanation is forthcoming for withholding this important evidence in the case. If for any reason, the Enquiry Officer was not available some other official of the management could have been produced to prove the enquiry proceedings and the findings of the Enquiry Officer. In the absence of the enquiry proceedings, it is difficult to hold that the findings given in the copy of the enquiry report, Ex. M-3 are correct and not perverse. The production of the Enquiry Officer and proving of the enquiry proceedings was all the more important when the workman concerned had made a specific allegation that no proper enquiry had been conducted against him and that he was not given any opportunity of cross-examining the witness or producing his own defence. According to him, the Enquiry Officer had not examined any witness in his presence except for recording his own statement copy Ex. M-9 on record.

So, taking into consideration all the facts and the circumstances of the case dismissed above, I am not satisfied that a just and proper enquiry into the alleged charges of misconduct, however, serious they may be, had been conducted against the present workman. In the circumstances, I am constrained to observe that the so-called enquiry alleged to have been conducted against Shri Teja Singh, the present workman, was a mere paper transaction and no reasonable and adequate opportunity having been given to him in defend himself the same was vitiated on account of the violation of the principles of natural justice, and I hold accordingly.

The enquiry into the acts of mis-conduct alleged to have been committed by the workman having been held to be vitiated and not a just and proper enquiry, the findings of guilty given by the Enquiry Officer against him could not be taken into consideration by the competent authority in taking the impugned action of the termination of his services. Such an action could be justified only if it had been preceded by a just and proper enquiry. But that is not the case here as discussed above. No request has been made on behalf of the management to lead evidence on merits to establish the charges of mis-conduct against the workman in the present proceedings in the event of the enquiry having been held to be vitiated and as such it not necessary to go into the merits of the case.

So, on the facts brought on record and in view of my above discussions, the termination of the services of the present workman cannot be held to be justified and in order and, in the result, he is entitled to reinstatement with continuity of his previous service and full back wages. There shall, however, be no order as to costs.

Dated : The 12th May, 1975.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1117, dated 14th May, 1975

Forwarded (four copies) to the Secretary to Government of Haryana, Labour Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

M. SETH, Commissioner and Secy.

COOPERATION DEPARTMENT

The 2nd June, 1975

No. 3199-C-I-75/15887.—Shri Mehtab Singh, Assistant Registrar, Cooperative Societies, of the Cooperation Department, who appeared in the Departmental Examination in Accounts held on 18th February, 1975, has qualified in the said examination.

V. P. JOHAR, Financial Commissioner & Secy.

TECHNICAL EDUCATION DEPARTMENT

The 19th May, 1975

No. 3390-PWIII(3)-75/15852.—On his appointment as Lecturer Shri Pritam Lal Kapur assumed charge of the post of Lecturer in Electrical Engineering at Government Polytechnic, Ambala City on 13th March, 1975 (forenoon).

S. N. BHANOT, Commissioner and Secy.